

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION 1976 OCT 27 PM 3 26

CLERK  
U.S. DISTRICT COURT

THE MAGNAVOX COMPANY and )  
SANDERS ASSOCIATES, INC., )  
Plaintiffs, ) Civil Action No. 77 C 3159  
v. )  
APF ELECTRONICS, INC., et al., )  
Defendants. )

RESPONSES OF DEFENDANTS UNIVERSAL RESEARCH  
LABORATORIES, INC. AND CONTROL SALES, INC.  
TO PLAINTIFF'S INTERROGATORY NOS. 2, 7, 10 AND 11

Defendants Universal Research Laboratories, Inc. and Control Sales, Inc. hereby respond to Plaintiff's Interrogatory Nos. 2, 7, 10 and 11 as follows.

With respect to Control Sales, Inc., Control Sales, Inc. did not and does not manufacture, use or sell video games. Control Sales, Inc. acted only as a commissioned representative for Universal Research Laboratories, Inc., with all sales being made by Universal Research Laboratories, Inc. and not by Control Sales, Inc. Offers for sale were accepted by Control Sales, Inc. on behalf of Universal Research Laboratories, Inc. and payment was made to Universal Research Laboratories, Inc., not to Control Sales, Inc. Control Sales, Inc. had no product, made no delivery and only received commission from Universal Research Laboratories, Inc. in connection with representation by Control Sales, Inc. on behalf of Universal Research

Laboratories, Inc.

2. Fully identify defendant's video games by responding to the following:

(a) State the model or type name or number of each video game made, used, or sold by defendant within the United States during the period April 25, 1972 through August 5, 1975 and the model or type name or number of each video game made, used, or sold by defendant within the United States since August 5, 1975.

(b) As to each model or type name or number video game stated in defendant's response to paragraph (a) of this interrogatory:

(i) state whether it is a coin-operated video game or a consumer video game;

(ii) describe the game or games played thereon as they appear to the player;

(iii) identify the document or documents containing a schematic electrical circuit diagram thereof;

(iv) identify the person or persons having the greatest knowledge of the electrical design and operation thereof;

(v) identify the manufacturer and/or supplier and the manufacturer's and/or supplier's part or model

number of any integrated circuit(s) included in such video game which integrated circuit(s) was specifically intended by its manufacturer to be used in and/or was sold for use in video games;

(vi) if any one or more units of that model or type of video game was not manufactured by defendant, identify the party who manufactured those video games not manufactured by defendant and the party from whom defendant acquired those video games.

Answer to Interrogatory No. 2(a) and 2(b).

Subsequent to June 6, 1977, Universal Research Laboratories, Inc. manufactured, used or sold within the United States video games:

INDY 500 consumer video game

Sears Speedway consumer video game

Video Action III consumer video game

Flying Fortress coin operated video game

"VAT" Video Action coin operated table including video game

Description of the game or games played on the above-identified video games and documents containing schematic electrical circuit diagrams thereof are available for inspection and copying by counsel for Plaintiffs and are included in the documents responsive to Plaintiffs' request for production of documents. Persons having the greatest knowledge of the

electrical design and operation of INDY 500, Speedway, Video Action III and the Video Action table are Edward L. Polanek, Darrell Blendowski, Daniel Micek and Thomas Jachimek. Persons having the greatest knowledge of the electrical design and operation of the Flying Fortress are Edward L. Polanek, Darrell Blendowski, Thomas Jachimek and Jeffrey Shroeder. The custom LSI circuit used in the INDY 500 and Speedway games was manufactured by Omnetics of Syracuse, New York and is Model No. F-4301-1B. The video games described above were all manufactured by Universal Research Laboratories, Inc.

2. (c) As to each model or type name or number video game stated in response to paragraph (a) of this interrogatory,

(i) state the number of units of that game made, used, or sold by defendant within the United States during the period August 25, 1972 through August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game for sales made during the period August 25, 1972 through August 5, 1975;

(ii) state the number of units of that game made, used or sold by defendant within the United States since August 25, 1972 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 25, 1972;

(iii) state the number of units of that game made, used, or sold by defendant within the United States since August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 5, 1975.

Answer to Interrogatory No. 2(c).

This Interrogatory is objected to because it requests information which is not relevant to the issues of validity and infringement in this lawsuit. Sales information regarding the accused devices is strictly confidential and need not be produced until a defendant in an infringement suit is first found to be liable for patent infringement. However, if Plaintiffs are willing to give to Defendants similar sales information regarding Plaintiffs and its licensees' sales of devices allegedly covered by the patents in suit, Defendants will supply such sales information under a suitable protective order.

7. (a) Does defendant contend that any of the video game models or types identified in the response to paragraph (a) of interrogatory 2 does not come within the terms of one or more claims of the patent in suit? If so, as to each and every video game model or type identified in defendant's response to interrogatory 2 which defendant contends does not come within the terms of one or more claims of the patent in suit, state in detail each and every

reason, ground, or basis to support defendant's contention that that video game model or type does not come within the terms of each of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, and 64 of the patent in suit.

Answer to Interrogatory No. 7(a).

Yes. Because of the undue multiplicity of the claims of the patents in suit and as a result of the indefiniteness of the claims of the patents in suit, counsel for Defendants is unable to ascertain the precise scope of the claims of the patent in suit. However, counsel for Plaintiff Magnavox, including Theodore Anderson and James T. Williams, have informed counsel for Defendants that the patents in suit are not intended to cover video games in which a first displayed symbol coincides with a second displayed symbol causing one of the displayed symbols to either explode or evaporate from display. INDY 500, Speedway, Flying Fortress and the video action coin operated table game have this characteristic.

Defendants intend to pursue further discovery in order to obtain additional information which may be relevant to this Interrogatory.

7. (b) Does defendant contend that plaintiffs are estopped from asserting that any one of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, or 64 is infringed by the manufacture, use and/or sale by defendant of any one or more of the video game models or types identified in defendant's response to interrogatory 2? If so, as to each such claim and as to each video game as to which defendant contends plaintiffs are estopped, specifically identify each limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item which defendant alleges resulted in said estoppel; state with specific reference to paper, page number, and line number, if any, in the file history of the application or applications for the patent in suit where said limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item occurred; and state every reason, basis, or ground upon which defendant alleges each such limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item resulted in such estoppel.

Answer to Interrogatory No. 7(b).

Yes. See response to Interrogatory No. 7(a).

10. Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to that agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

Answer to Interrogatory No. 10.

Yes. Defendant Universal Research Laboratories, Inc. has given an indemnity agreement relating to charges of infringement to Control Sales, Inc. A copy of the pertinent portions of the indemnity agreement will be made available for inspection and copying by counsel for Plaintiffs.

11. With respect to plaintiffs acquisition of knowledge of the patents in suit:

(a) State the date when defendant first gained knowledge or was advised or received notice of that patent or of the application which resulted in that patent;

Answer to Interrogatory No. 11(a).

Control Sales, Inc. -- June 19, 1974; Universal Research Laboratories, Inc. -- June 17, 1974.

11. (b) State the date when defendant first gained knowledge or was advised or received notice that plaintiffs individually or collectively were asserting any exclusive or patent rights in the industry or trade related to video games;

Answer to Interrogatory No. 11(b).

Control Sales, Inc. -- June 19, 1974; Universal Research Laboratories, Inc. -- June 17, 1974.

11. (c) State in detail the manner in which defendant gained or received the knowledge, advice or notice specified in paragraphs (a) and (b) of this interrogatory and identify the person or persons, firm or firms, corporation or corporations and the like from whom such knowledge, advice or notice was gained or received;

Answer to Interrogatory No. 11(c).

Defendant Control Sales, Inc. received a letter dated June 18, 1974 signed by Thomas A. Briody. This letter was seen by Ronald Rutkowski.

Universal Research Laboratories, Inc. received a letter dated June 13, 1974 signed by Thomas A. Briody. This letter was seen by William E. Olliges and Edward L. Polanek.

11. (d) Identify all documents relating to the knowledge, advice and notice referred to in paragraphs (a) through (c) hereof;

Answer to Interrogatory No. 11(d).

See response to Interrogatory No. 11(c).

(e) State whether defendant or an officer, director, or managing agent of defendant has ever formed an opinion as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted infringement of said patent;

(f) If defendant's response to paragraph (e) of this interrogatory is in the affirmative, state the date or dates upon which defendant or any of its officers, directors, or managing agents arrived at each such opinion or opinions as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted an infringement of said patent; state each such opinion or opinions; identify each officer, director, managing agent,

or other personnel of defendant who formed and held that opinion or opinions; identify every document containing or reporting that opinion or opinions; and identify each and every alleged fact, act, or occurrence and each and every document considered in arriving at that opinion or opinions.

Answer to Interrogatory No. 11(e) and 11(f).

Defendants' contentions are set forth in their Answers to the Complaint and in their responses to Plaintiffs' Interrogatories. Any further information sought by Plaintiffs concerning formulations within the mind of Defendants' employees is objected to as being beyond the scope of Rule 33 of the Federal Rules of Civil Procedure, not reasonably calculated to lead to the discovery of admissible evidence and relating solely to privileged information.

UNIVERSAL RESEARCH LABORATORIES, INC.  
CONTROL SALES, INC.

By



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent, by first class mail, postage prepaid, this 25th day of October, 1978, to the following persons:

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